Supreme Court, U.S.
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No. 96-922

In The

Supreme Court of the United States

October Term, 1996

MERCHANTS BANK OF CALIFORNIA, N.A.,
(formerly known as RANCHO DOMINGUEZ BANK),

Petitioner,

vs.

JOHN MARDULA, Jr.,

Respondent.

**On Petition For Writ Of Certiorari To
The California Court Of Appeal
– Second Appellate District**

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent John Mardula respectfully opposes the Merchant Bank of California's Petition for Writ of Certiorari to review the published opinion of the California Court of Appeal, Second Appellate District, Division Three.

OPINIONS BELOW

California Court of Appeal, Second Appellate District, Division Three, reversed the dismissal of Respondent's Complaint and ordered the matter returned to the Los Angeles Superior Court for a trial on the factual merits. California Supreme Court denied Petitioners' request for review. At present time, no final judgment is entered in *Mardula v. Rancho Dominguez Bank,* Los Angeles Superior No. BC 104006.

JURISDICTION

The Petitioner incorrectly argues that jurisdiction of this Court is proper because the California Supreme Court has either affirmed or denied the validity of a judgment of an inferior court over which it, by law, can exercise appellate authority, assuming that a federal question is presented. See 28 U.S.C. § 1257. Respondent maintains that this Court does not have jurisdiction because there has been no final judgment below.

STATEMENT OF FACTS

On September 9, 1992, Petitioner and Respondent entered into a written employment agreement, wherein Respondent was employed in the position of President and Chief Executive Officer of Rancho Dominguez Bank (now Merchant's Bank of California, N.A.) The contract provided that Respondent would be paid the sum of $100,000 per year for a term of three years commencing on September 18, 1992 and continuing until September 30, 1995. In 1994, the Petitioner was sold and merged; the majority shareholder of the new management team included DANIEL K. ROBERTS, one of the counsel in this matter.

On April 5, 1994, Respondent was requested to resign from his position as President and Chief Executive Officer. The resignation request was passed by a unanimous resolution of the Board of Directors on April 5, 1994 and was effective immediately. Respondent was offered a one month severance package upon the execution of a release of his employment contract or, alternatively, if Respondent did not sign such a release, his termination would be effective immediately. Respondent's Employment Agreement with Rancho Dominguez Bank dated September 9, 1992 expressly provides upon termination for cause for reasons of disability the Respondent shall receive a "severance amount in semi-monthly installments equivalent to one-quarter of the employee's annual basic compensation in effect at the time of termination for the first year of the agreement and thereafter an amount equivalent to one-half the employee's annual basic compensation in effect at the time of the employee's termination." See Appendix 1.

Respondent's termination was effective on April 5, 1994, over a year and seven months after the effective date of the Employment Agreement. The September 9, 1992 Employment Agreement further provides, upon Petitioner's termination of Respondent, without cause, that Respondent is also entitled to "a severance amount equivalent to one-quarter the employee's annual basic compensation at the time of termination for the first year of the agreement and thereafter an amount equivalent to one-half the employee's annual basic compensation in effect at the time of the employee's termination."

The Employment Agreement also provides that, upon the "sale, merger, dissolution of business, or other substantial change of ownership or operation of the employer's business, employer may, at the employer's option, either terminate this agreement or assign the employer's interest in this agreement to the successor entity. Should this agreement be terminated, employee shall be entitled to receive, immediately thereafter, one-quarter of the employee's annual basic compensation for the first year of the agreement, and thereafter, six months' basic compensation at the rate prevailing at termination. Should the agreement be assigned, the employer shall be released from all obligations pursuant to this agreement."

The Employment Agreement also calls for post-termination obligations on the part of Respondent. This included the obligation not to use a customer list for two years following termination of the agreement; Respondent was further obligated not to solicit the employer's customers and co-employees for two years following the termination of the agreement. Finally, Respondent was

obligated not to compete with the employer for a period of one year within a radius of five miles of any of the employer's principal places of business in any county of California.

On June 29, 1994, Respondent filed his Complaint in the Los Angeles County Superior Court, entitled *John Mardula v. Rancho Dominguez Bank*, Case No. BC 104006 for damages against Rancho Dominguez Bank. Respondent claimed that Rancho Dominguez Bank refused to pay him his six month severance package upon his termination as provided for in the Employment Agreement entered into by and between Respondent and the Bank.

Petitioner demurred to the Complaint, which came for hearing on July 7, 1994 before the Honorable David A. Workman, Judge for the Los Angeles County Superior Court. The Court sustained Petitioner's demurrer without leave to amend. The matter was subsequently dismissed with prejudice pursuant to the ruling on the demurrer. Respondent filed a timely Notice of Appeal.

At the hearing on the Demurrer, the Honorable David A. Workman was under the mistaken impression that 12 U.S.C. § 24 preempted any cause of action by Respondent and that Rancho Dominguez Bank could not enter into any contractual term with Respondent, limiting its liability upon termination of employment.

On March 15, 1996, the Second Appellate District, Division Three, reversed the granting of the Demurrer and returned the matter to the Los Angeles Superior Court, where the matter is currently scheduled for trial

on January 6, 1997. No final judgment has yet to be entered.

REASON FOR DENYING THE WRIT

The Published Decision Below, Reversing Dismissal by the Superior Court of Los Angeles Is Not a Final Judgment That May Be Reviewed by this Court, and in Any Event, Neither Conflicts with Any Decision of this Court, or Other Lower Courts, Nor Presents a Significant Issue of Federal Law.

1. This Court does not have Jurisdiction Under 28 U.S.C. § 1257 Because There has been No Final Judgment Below.

The first reason why the Petition should be denied is there has been no final judgment below and therefore there is no jurisdiction under 28 U.S.C. § 1257. The State Supreme Court refused to grant review of the Court of Appeal decision, reversing the Trial Court's granting of a Demurrer without leave to amend. This Court has repeatedly held that the decision of a State Appellate Court either affirming or denying the refusal to dismiss an action is not final and consequently that review cannot be had under Section 1257. *Werner v. City Council of Charleston*, 151 U.S. 361 (1894); *Meagher v. Minnesota Thresher Mfg. Co.*, 145 U.S. 608, 610-611 (1892). See also *Southern Pacific Co., v. Gileo*, 351 U.S. 493, 496 (1956).

In this case, Petitioner has raised the defense of preemption of federal law – that is, it denies that it has any obligation to pay Respondent's severance because federal law renders the clause of the contract unenforceable. It is

thus quite possible that the case may be resolved in the State Courts without any need to consider the federal preemption defense. Accordingly, there is no basis for a grant of certiorari under Section 1257. See *Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379, 381-382 (1953).

2. Federal Law Does Not Preclude a Bank from Entering into an Employment Contract. That Includes as One of its Terms and Conditions the Obtainment of Reasonable Severance Upon Termination of Employment.

Petitioner argues that a national bank governed under 12 U.S.C. § 24 is forever precluded from entering into an employment agreement with its officers and employees providing for the payment of severance because it would limit a bank's ability to terminate without cause. If a bank has to honor its contract calling for the payment of severance which it negotiated with the bank officer, such obligation would interfere with the bank's ability to freely terminate its employees, because of possible financial detriment. In the contract at hand, Petitioner had the unfettered right to terminate Respondent's employment, with or without cause, at any time. Moreover, if Respondent had habitually neglected his duties as President, wilfully breached the duties of his contract, or engaged in illegal activity Petitioner would have no obligation to pay Respondent severance. Here, however, new management had purchased the bank and initially asked Respondent to stay on at the Bank. Then, upon coming on the Board, management made the decision to terminate Respondent. If Respondent had executed a general release, the Petitioner would have paid

Respondent one month severance instead of the six called for in his Employment Agreement. None of Respondent's post-termination duties under the Employment Agreement were nullified.

Respondent has never argued, nor did the Court of Appeal ever hold that the firing of Respondent by the Board of Directors was a wrongful act. The Courts have consistently held that an officer or employee cannot claim that their discharge constituted a breach of the written employment agreement, a breach of an oral promise of continued employment, breach of an implied agreement for continued employment, breach of an implied covenant of good faith and fair dealing, breach of a state law principle forbidding discharge on grounds that contravene public policy, and violation of state anti-discrimination statutes. The California Court of Appeal reaffirmed all those principles and held that a nationally chartered bank must be free to remove and replace its officers at will. See *Mardula v. Rancho Dominguez Bank*.

The Court, however, posed the question of whether 12 U.S.C. § 24 renders unenforceable the parties' bargain concerning severance pay. In that connection, the Court of Appeal said as follows:

> Turning to our own case, it is our determination that the amount of severance pay fixed in the parties' written bargain was not unreasonably great in relation to the contemplated sudden disruption of the bank president's income security should he be discharged without cause. The severance-pay agreement did not violate either the letter or the spirit of section 24. When a bank

> and its officer negotiate the officer's compensation agreement, both are presumed to be aware that by federal law, the officer may become unemployed on a moment's notice, without warning or cause. In addition, the bank may wish to bargain for the officer's agreement that after his employment ends he will not immediately seek work with a local competitor. The parties may therefore choose to agree on a formula providing for a reasonable amount of severance pay. Some officers may be willing to accept a lower salary level in light of an agreement for reasonable severance pay. Here the agreement for six months' salary as severance pay neither prevented nor unreasonably interfered with the bank's statutory right to discharge plaintiff at the pleasure of its board of directors. *To hold otherwise would be to outlaw severance pay for bank officers, a rule we would not adopt absent more explicit legislation or more authoritative precedent.* At oral argument, respondent bank characterized the severance-pay agreement as a golden parachute. (This term was also used in the *Schmidt* and *Reynolds* cases, both of which upheld the agreement.) In this case, a half-year's salary is insufficiently prodigal to warrant this pejorative label; it is an ordinary silk parachute. It is unnecessary in the present case to express a view on the validity of the more extravagant severance-pay agreements upheld in *Ewert* and *Stockwell*.

The California Appellate Court held that six months severance in the sum of $50,000 was reasonable and not made unenforceable by federal law.

3. Several States Have Followed the Comptroller of Currency's Regulation, Found at 12 C.F.R. § 7.5220, Granted the Board of Directors' Authority to Enter into Employment Contracts with its Officers and Employees upon Reasonable Terms and Conditions.

In 1971, the Comptroller of Currency promulgated regulations interpreting 12 U.S.C. § 24, paragraph fifth. In that connection, the Comptroller of Currency enacted a regulation that provides: "The Board of Directors of a National Bank, pursuant to paragraph fifth of 12 U.S.C. § 24, may enter into employment contracts with its officers and employees upon reasonable terms and conditions." As noted by the California Court of Appeal, six Sister State decisions were found involving severance payments to terminated bank executives. In only two of those cases were the severance pay agreements invalidated. In the first, *Copeland v. Melrose National Bank* (1930) 229 A.D. 311, 241 NYS 429, affirmed, 254 NY 632, 173 NE 898, the decision was reached some 40 years before the Comptroller of Currency passed 12 C.F.R. § 7.5220. However, 60 years later, the New York Trial Court declined to follow *Copeland* and upheld a severance agreement in the case of *Schmidt v. Park Avenue Bank* (1990) 147 Misc.2d 1043, 558 NYS2d 779. In that case, the Court held the salary continuation agreement did not violate 12 U.S.C. § 24, relying on the Comptroller's interpretive ruling 12 C.F.R. § 7.5220. In 1987, a Florida Court refused to enforce a severance clause as liquidated damages. See *International Bank of Miami v. Bennett* (Fla.Dist. Ct.App. 1987) 513 So.2d 1294, certiorari denied, 485 U.S. 988. However, an opposite conclusion was reached by the Florida District

Court of Appeal in the case of *Stockwell v. Citizens National Bank & Trust Co.* (Fla.Dist.Ct.App.1995) 655 So.2d 1220. In that case, a Florida Court held that an officer could not sue for wrongful termination, but could enforce "all reasonable terms and conditions contained in the employment agreement." (655 So.2d at 1223.)

The Florida Supreme Court granted review and upheld the payment of severance. In disapproving of *Bennett*, the Florida Court held there was nothing that made the payment of severance void as against public policy (675 So.2d 584). The bank could not have its proverbial cake and eat it too. Banks cannot entice officers to work for them and then refuse to honor their contractual obligations by a tenuous interpretation of the Act. The Bank retained its power to terminate even though it must honor the severance contract.

A severance pay agreement was also upheld in the case of *First National Bank of Danville v. Reynolds* (Ind.Ct.App. 1986) 491 N.E.2d 218 and *Ewert v. Drexel National Bank* (1995) 271 M.App.3d 1124 [208 Ill. Dec 431, 649 N.E.2d 487]. In those cases, the Courts found the severance payment provisions to be reasonable under the circumstances and therefore not unenforceable. The California Court, in its opinion below, did not express any view on the validity of a more extravagant severance pay agreement that might be called a "golden parachute." The California court held that a half-year's salary was insufficiently prodigal to warrant the pejorative label, "golden parachute." Nor can it be said that such a clause invites "self dealing," nor can it be called "a poison pill" as suggested by Petitioner. Most important, the severance

pay formula was negotiated at the beginning of Respondent's employment, not when the Bank was on the verge of takeover. Rather, a reasonable severance payment allows a bank officer to land a new job in a new community. The provision is sufficiently reasonable in view of Respondent's post-termination obligations under the contract.

CONCLUSION

The published decision below reversing a dismissal of Respondent's Complaint after the granting of a demurrer is not a final judgment that may be reviewed by this Court and, in any event, neither conflicts with any decision of this Court or any other lower Court, nor presents a significant issue of federal law.

Therefore, this Court should deny Petitioner's request for certiorari in its entirety.

DATED: January 30, 1997

Respectfully submitted,

REHWALD RAMESON LEWIS & GLASNER

WILLIAM REHWALD
Attorneys for Respondent
JOHN MARDULA

APPENDIX 1

RANCHO DOMINGUEZ BANK. N.A.

EMPLOYMENT AGREEMENT

I AGREEMENT: This agreement ("Agreement") is between John J. Mardula, Jr. ("Employee") and Rancho Dominguez Bank, N.A. ("Employer") and defines the employment relationship between the Employee and the Employer. The Employee and the Employer promise to be bound by the obligations following, and these promises represent the full and mutual consideration for this Agreement.

II DESCRIPTION OF THE EMPLOYER: The Employer is a National banking corporation that will be engaged in the business of banking with its principal place of business located in Carson, California.

III THE EMPLOYEE'S POSITION AND DUTIES: The Employee shall hold the position of the Employer's President/Chief Executive Officer, and, subject to control by the Employer's Board of Directors, the duties of that position shall include, but are not be [sic] limited to, managing the Employer's business, promoting the Employer's business, managing all other employees of the Employer, reporting to the Employer's Board of Directors, and maintaining compliance with all laws and regulations that affect the Employer's business. The Employee shall serve as a Director on the Employer's Board of directors.

IV EMPLOYEE COMPENSATION:

A. Basic Compensation: From commencement of employment under this Agreement, 9/18/92 and until 9/30/95, a term of 3 years of service, unless sooner terminated, the Employer shall

pay the Employee semi-monthly, basic compensation at a rate equivalent to $100,000 per year. Each consecutive calendar year thereafter, the Employee's rate of pay shall be set by Board of Directors of Employer in conjunction with his annual performance review. The Employee shall receive no additional compensation for serving as a Director on the Board of Directors.

B. Bonus: Employer intends to pay Employee a bonus in reward for exceptional performance of the duties set forth herein. However, any bonus paid is entirely at the discretion of the Board of Directors, and nothing herein shall be construed as an agreement to require the Board of Directors to grant any bonus. Any bonus shall be paid at the end of each consecutive calendar year of service, beginning 12/31/93, under this Agreement. In the exercise of its discretion in awarding such bonuses, the Employer will consider the profitability, loan and deposit growth, and the quality of loan portfolio of the Employer. The parties agree that the following guidelines relative to profits are reasonable in determining such bonus:

(1) First Year: Up to December 31, 1993, in its absolute discretion, the Board of Directors may award Employee a bonus or bonuses based upon Employer's and Employee's performance. Granting of such bonus or bonuses shall be further subject to compliance with applicable regulatory requirements.

(2) Second and Subsequent Calendar Years: Starting with the 1994 calendar year, 6% of net pre-tax earnings of the

Employer, excluding profits generated by sale of assets and including loan losses, as well as additions to loan loss reserves, computed for purposes of bonus calculation at 1 1/2% of loans made during the year. The term "net pre-tax profit" shall be defined and determined, through recognized and accepted accounting standards, as recommended and approved by Employer's accounting firm.

The foregoing guidelines may be improved from time to time with respect to Employee's bonus, but said guidelines will not be diminished in any way and nothing in the guidelines shall require the Employer to grant a bonus which exceeds the total salary payment made for the year for which a bonus may be granted.

V EMPLOYEE BENEFITS:

A. Group Medical and Life Insurance Benefits: The Employer shall provide Employee with term life insurance benefits in the total aggregate amount of $135,000. The Employer shall also provide for Employee, at Employer's expense, participation for Employee in medical, dental, vision, and accident and health insurance benefits comparable to those benefits available from time to time under the California Bankers Association Group Insurance Program for key executives.

B. Vacation: The Employer shall provide the Employee four (4) weeks of paid vacation for each twelve (12) months of service. The Employee must take not less than two consecutive weeks of such vacation for each 12 months of service, and at the election of the Employee,

the Employee may take the remainder of the vacation, be paid for the remainder of the vacation, or carry the remainder of the vacation forward to the next calendar year.

C. Stock Option: The Employer's Board of Directors agrees to grant to Employee stock options covering four percent (4%) of the amount of the Employer's initial issuance of common stock, at a purchase price per share equal to the per share price of the current selling price of the Employer's stock at the date of hire, on such terms and conditions as may be contained in Stock Option Agreements to be entered into by and between the Employer and Employee. The Employer agrees that such options shall vest in equal installments over a period of three (3) years, and will be for a term of six (6) years. Upon termination of Employee's employment by Employer for cause, all stock options held by Employee, whether vested or not, shall immediately expire without any notice to Employee being required. Upon termination of Employee's employment by Employer for any other reason, Employee (or Employee's personal representative in the event of termination by death or incapacity) shall have ninety (90) days from the date of termination to exercise any options that had vested as of the date of termination. Upon termination of this Agreement, the Employee (or Employee's personal representative in the event of termination by death or incapacity) must offer for sale to the Employer, including any stock acquired as a result of the exercise of vested stock options during the ninety (90) day period following termination of employment.

The Employer shall not be obligated to purchase such stock, but may elect, at its sole discretion, to accept or reject all or any part of such stock. In the event of a merger, consolidation or other reorganization involving the Employer, the Employee's stock option shall become exercisable in full as to all shares subject to option, whether otherwise vested or not, commencing thirty (30) days prior to the proposed date of merger, consolidation or other reorganization. In the event the Employee exercises such option, but such merger consolidation or other reorganization is not consummated on the proposed date, Employee shall have a period of sixty (60) days from such proposed date to rescind the purchase, in which event the shares as to which the option was exercised shall become again subject to option on the terms set forth in the Agreement.

VI EMPLOYEE EXPENSES:

A. Reimbursement for Business Expenses: Employee shall be entitled to reimbursement by Employer for any ordinary and necessary business expenses incurred by Employee in the performance of Employee's duties and in acting for the Employer during the term, which types of expenditures shall be determined by the Employer's Board of Directors, provided that:

(1) Each such expenditure is of a nature qualifying it as a proper deduction on the federal and state Income Tax Returns of the Employer as a business expense and not as deductible compensation to Employee and;

(2) Employee furnished to the Employer adequate records and other documentary evidence required by federal and state statutes and regulations issued by the appropriate taxing authorities for the substantiation of such expenditures as deductible business expenses of the Employee and not as deductible compensation to the Employee.

VII PROTECTION OF BUSINESS INFORMATION:

A. During Employment: Prior to termination of this Agreement, the Employee shall have the following obligations:

(1) No Competition: The Employee shall not, on behalf of the Employee or any other, compete with the Employer.

(2) No Planning to Compete Following Employment: The Employee shall not plan or otherwise prepare to compete with the Employer following the Employee's employment with the Employer.

(3) No Solicitation of Employees to Compete: The Employee shall not solicit other employees of the Employer to compete with the Employer following the Employee's employment with the Employer.

(4) No Disclosure: The Employee shall not disclose to any person who has no business reason to know, any papers or other materials containing business information of the Employer, any confidential information of the Employer, any business ideas

of the Employer, any names of any customers of the Employer, or any names of any employees of the Employer.

B. Following Employment: Upon termination of this Agreement, the Employee shall have the following obligations:

(1) Return of Business Information: The Employee shall deliver to the Employer all papers and other materials containing business information that the Employee acquired during employment with the Employer.

(2) No Use of Trade Secrets: The Employee may use no trade secret acquired from the Employer before, during or after the Employee's employment with the Employer.

(3) No Use of Confidential Information: The Employee may use no confidential information acquired from the Employer before, during or after the Employee's employment with the Employer.

(4) No Use of Business Ideas: The Employee may use no business ideas, acquired from the Employer before, during or after the Employee's employment with the Employer.

(5) No Use of Customer Lists: For two years following the termination of this Agreement, the Employee may use no customer lists acquired from the Employer before, during or after the Employee's employment with the Employer.

(6) No Solicitation of Employer's Customers: For two years following the termination of this Agreement, the Employee may not solicit any customer of the Employer held by the Employer during the Employee's employment with the Employer.

(7) No Solicitation of Employer's Employees: For two years following the termination of this Agreement, the Employee may solicit for employment elsewhere, no employee of the Employer that was employed by the Employer during the time of the Employee's employment with the Employer.

(8) No Local Competition for One Year: If the Employer elects to purchase all of the Employee's stock and options, as described in the Stock Options provision of the Agreement, the Employee shall agree with the Employer in consideration for the agreement to purchase, to not compete with the Employer for a period of one year within a 5 mile radius of any of the Employer's principal places of business in any California county.

C. Remedies for Breach of Obligations Regarding Business Information: In addition to the Employer's remedies at law for any breach of the Employee's obligation regarding protection of business information, the Employee acknowledges that the Employee's duties are of a special, unique, unusual, extraordinary, or intellectual character, which gives them peculiar value that cannot be reasonably or adequately compensated in damages in an action

of law, and equitable relief in the form of injunction or other equitable decree may lie.

VIII TERM OF AGREEMENT: Commencement of employment under this Agreement shall begin following the date of this Agreement, subject to approval of the candidate by the Office of the Comptroller of the Currency, and on such later date as Employer and Employee may mutually agree provided however, that this Agreement shall be null and void if such conditions have not commenced by October 1, 1992. This option may be renewed upon ninety (90) day written notice by Employee, indicating exercise of option for additional three (3) years of service, 10/01/95 to 10/01/98, on approval by the Employer's Board of Directors. The Agreement shall terminate on September 30, 1995, unless sooner terminated in accordance with the provisions hereof.

IX TERMINATION OF THE AGREEMENT:

A. Causes of Termination:

(1) Termination by Employee: The Employee may terminate this Agreement, for any reason, upon written notice to the Employer not fewer than 90 days before the date of the intended termination. Employee further agrees, that in the event of resignation or termination of Employee's employment as President and Chief Executive Officer for any reason, Employee will resign from the Employer's Board of Directors on the effective date of such resignation or termination.

(2) Termination by the Employer:

a. For Cause: The Employer may terminate the Agreement, by action of the

Board of Directors, for just cause, including, but not limited to, any willful breach of duty by the Employee in the course of the Employee's employment, or in the case of the Employee's habitual neglect of the Employee's duties, or as determined by the Employer's Board of Directors in good faith, the Employee's continued incapacity to perform the Employee's duties, or if the Employee engages in illegal activity which materially adversely affects Employer's reputation in the community or which evidences the lack of Employee's fitness or ability to perform Employee's duties, or if the Employee is found to be physically or mentally incapable of performing Employee's duties for a period of ninety (90) days or greater. In the event of termination because of the just cause reason of the Employee's continued incapacity to perform, but for no other just cause reason, the Employer shall pay to the Employee a severance amount, in semi-monthly installments, equivalent to one-quarter of the Employee's annual Basic Compensation in effect at the time of the termination for the first year of Agreement, and thereafter in an amount equivalent to one-half of the Employee's annual Basic Compensation in effect at the time of the Employee's termination.

b. Without Cause: The Employer may terminate this Agreement without

cause, upon the Employer's payment to the Employee of a severance amount equivalent to one-quarter of the Employee's annual Basic Compensation at the time of termination for the first year of the Agreement and thereafter equivalent to one-half of the Employee's annual Basic Compensation in effect at the time of the Employee's termination.

(3) Governmental Action: If, pursuant to governmental action, the Employer is ordered to cease business, or the Employer is ordered to remove the Employee from employment, this Agreement shall terminate upon payment to Employee of an amount equivalent to one-half of the Employee's annual Basic Compensation in effect at the time of such governmental action.

(4) Sale, Merger, or Dissolution of Business: In the event of a sale, merger, dissolution of business, or other substantial change in ownership or operation of the Employer's business, the Employer may, at the Employer's option, either terminate this Agreement or assign the Employer's interest in this Agreement to the successor entity. Should this Agreement be terminated, Employee shall be entitled to receive, immediately thereafter, one-quarter of the Employee's annual Basic Compensation for the first year of the Agreement and thereafter six months Basic Compensation at the rate prevailing at termination. Should the Agreement be

assigned, the Employer shall be released from all obligations pursuant to this Agreement.

(5) Expiration of Term: Upon expiration of the term of this Agreement, the Agreement shall terminate unless renewal in accordance with provision of Paragraph VIII, "Term of Agreement".

B. Effect of Termination of Agreement: Upon termination of this Agreement, whether by expiration of the term of the Agreement or by termination pursuant to any provision of the Agreement, or otherwise, all obligations of the Employee and Employer pursuant to this Agreement shall terminate, provided however, the Employee's obligations pursuant to Paragraph IV, "Protection of Business Information" provisions of this Agreement shall continue for an indefinite period, and provided further, that the Employee's obligations pursuant to the Stock Options provisions of this Agreement shall continue for an indefinite period.

X CONSTRUCTION OF THIS AGREEMENT

A. Choice of Law: This Agreement is to be construed pursuant to laws of the State of California.

B. Invalid Agreement Provisions: Should any provision of this Agreement become legally unenforceable, no other provision of this Agreement shall be affected, and this Agreement shall continue as if the Agreement had been executed absent the unenforceable provision.

C. No Other Agreements: This Agreement represents the full agreement between the Employee

and the Employer, and this Agreement supersedes any other agreements, oral or written, that may define the employment relationship between the Employee and the Employer. In executing this Agreement, neither the Employee nor the Employer relies upon any promise, representation, or other inducement that is not expressed in this Agreement. This Agreement may be modified only by written agreement of the Employee and the Employer, and may not be modified by any oral agreement.

D. No Waiver by Failure to Enforce: Failure by either the Employee or the Employer to enforce any provision of this Agreement shall not be construed as a waiver of that provision and shall not prejudice the right of the Employee or the Employer to enforce that provision.

AGREED AND ACCEPTED (EMPLOYEE)

By:
/s/ John J. Mardula, Jr.
John J. Mardula, Jr.

Dated: 9/9/92

AGREED AND ACCEPTED (EMPLOYER)

By:
/s/ Frank J. DeSantis
Frank J. DeSantis
Personnel Committee Chairman
RANCHO DOMINGUEZ BANK, N.A.

Dated: 9/9/92

By:
/s/ Lee M. Anderson
Lee M. Anderson
Chairman of the
Board
RANCHO
DOMINGUEZ
BANK, N.A.

Dated: 9/9/92